(2)

Supreme Court, U.S.
FILED
APR 19 2005
OFFICE OF THE CLERK

No. 04-872

In the Supreme Court of the United States

SANDRA KUCERA, SARAH THERESE WINDER, KRISTIN ZUBEL, NATALIE BOLTON, PHILLIP SALISBURY, SAMANTHA BERG, TIMOTHY JOHNSON and GREGORY KAFOURY,

Petitioners,

v.

BILL BRADBURY, Secretary of State, DEMOCRATIC PARTY OF OREGON, JOHN NEEL PENDER and JAMES EDMUNSON,

Respondents.

On Petition for Writ of Certiorari to the Oregon Supreme Court

RESPONDENT BILL BRADBURY'S BRIEF IN OPPOSITION

HARDY MYERS
Attorney General of Oregon
PETER SHEPHERD
Deputy Attorney General
*MARY H. WILLIAMS
Solicitor General
KAYE E. MCDONALD
Assistant Attorney General
400 Justice Building
Salem, Oregon 97301-4096
Phone: (503) 378-4402
Counsel for Respondent

*Counsel of Record

QUESTIONS PRESENTED

1.

In the state courts, petitioners made an "as applied" challenge to the Oregon Secretary of State's determination that the Nader campaign had failed to obtain a sufficient number of signatures to qualify for the 2004 general election. Underlying most of those claims were petitioners' erroneous and/or disputed factual assertions that the Secretary had applied "unwritten rules" to their signature gatherers without notice or an opportunity to cure circulator certification errors. The Nader/Kucera ticket was not placed on the 2004 Oregon general ballot. After the election, the Secretary adopted new rules setting forth the review procedures that will be used in future elections, including rules regarding what constitutes sufficient and insufficient circulator certification, signature sheet dating requirements, and procedures for obtaining exemplars of certain circulators' signatures after notice from the Secretary of apparently non-complying signatures.

Are petitioners' claims based on the Secretary's application of "unwritten rules" and absence of notice during the Nader campaign moot?

If not, should this Court review the constitutionality of the new rules without allowing state courts an opportunity to consider the constitutionality of the new rules under state law?

2.

In rejecting petitioners' various claims, the Oregon Supreme Court held as a matter of state law that the Secretary had not applied "unwritten rules" to the Nader campaign. Rather, the Secretary had adopted rules, along with plausible interpretations of those rules, to give effect to elections laws, including Or. Rev. Stat. § 249.740(4), which requires that circulators certify on each signature sheet that the signer had

signed the sheet in the circulator's presence, and Or. Rev. Stat. § 249.009(1)(b), which requires the Secretary to promulgate a rule prescribing a system of petition signature sheet numbering. The Oregon Supreme Court further concluded that the legislature had authorized the Secretary to employ internal review measures to ensure uniformity in the application, operation and interpretation of the election laws. According to the state court, the Secretary carried out that legal authority in his written instructions to the county clerks.

Should this court review the state court's factual and legal determination that the Secretary did not apply "unwritten rules" to the Nader campaign under state law?

3.

At trial in state court, the Secretary and intervenors presented evidence and argument showing that sequential numbering of signature sheets, a rule specifically authorized by statute, is necessary in order to prevent fraud in nominating petitions. The Secretary and intervenors similarly presented evidence and argument showing that signing and dating requirements for nominating petition circulators, which were properly applied under the Secretary's lawful exercise of delegated authority, advanced the legislature's objectives of deterring fraud and promoting orderliness and efficiency in the nomination process. The Oregon Supreme Court relied on *Buckley v. American Constitutional Law Found.*, 525 U.S. 182, 190 (1999), as authority for the proposition that a state has "considerable leeway to protect the integrity and reliability of the initiative process" and that in analogous circumstances, a requirement that petition circulators attach an affidavit containing particular factual statements to a petition is one such legitimate safeguard. This Court elsewhere has made it clear that the conduct of the elections process is a constitutional obligation of the states properly requiring a significant degree of detailed regulation and that it will uphold reason-

able and nondiscriminatory procedural election regulations such as those challenged here.

Should this Court grant review to determine whether the Oregon Supreme Court's decision upholding the Secretary's implementation of requirements concerning the proper pagination, certification, and dating of signature sheets conflicts with unspecified decisions of this Court?

4.

In the trial court, petitioners made no claim that the Secretary denied voters equal protection by disqualifying signature sheets based on circulator error, and neither the trial court nor the Oregon Supreme Court considered that contention.

Should this Court review that unpreserved claim?

PARTIES TO THE PROCEEDING

All parties to the proceeding are named in the caption.

TABLE OF CONTENTS

Page

Questions Presented i

Parties to the Proceeding v

Statement 1

Reasons the Writ Should be Denied 10

A. Introduction. 10

B. The Oregon Supreme Court's decision 11

C. This case is moot. 18

1. Applicable Legal Principles 18

2. Petitioners' Due Process Claims 19

3. Petitioners' Right to Travel Claim 20

4. Petitioners' First Amendment Claims 21

D. Petitioner's Equal Protection Claims Are Not Properly Before This Court 22

E. The Oregon Supreme Court Applied Settled Principles of Federal Law to Uphold the Secretary's Non-discriminatory and Reasonable Elections Regulations 23

1. Petitioners' claims have been largely resolved against them under state law. 23

2. This Court reviews the Secretary's regulations to determine whether they are reasonable and non-discriminatory. 25

3. The state's interest in holding fair and efficient elections far outweighs the minimal burdens that the Secretary's rules place on nominating petition gatherers. 26

Conclusion 30

Supplemental Appendix (bound under separate cover)

TABLE OF AUTHORITIES

Page

Cases Cited

Ailes v. Portland Meadows, Inc.,
312 Or. 376, 823 P.2d 956 (1991) 22

Anderson v. Celebrezze,
460 U.S. 780 (1983) 25, 26, 27

Buckley v. American Constitutional Law Found.,
525 U.S. 182 (1999) ..... ii, 17, 18, 30

Burdick v. Takashi,
504 U.S. 428 (1992) 26

Illinois State Bd. of Elections v. Socialist Workers Party,
440 U.S. 173 (1979) 19

Kucera v. Bradbury,
125 S. Ct. 27 (2004) 10

Kucera v. Bradbury,
337 Or. 384, 97 P.3d 1191 (2004) 8, 9, 11, 24, 25

Storer v. Brown,
415 U.S. 724, 94 S. Ct. 1274,
39 L. Ed. 2d 714 (1974) 25, 26, 27

Timmons v. Twin Cities Area New Party,
520 U.S. 351 (1997) 26, 27, 28, 30

Weinstein v. Bradford,
423 U.S. 147 (1975) 19

Constitutional and Statutory Provisions

Or. Rev. Stat. § 183.400(1) 21, 22

Or. Rev. Stat. § 183.400(2) 21

Or. Rev. Stat. § 183.400(4)(a) 21

Or. Rev. Stat. § 183.480 21
Or. Rev. Stat. § 246.110 ..... 5, 12, 28
Or. Rev. Stat. § 246.120 12
Or. Rev. Stat. § 246.150 ..... 12, 28
Or. Rev. Stat. § 249.008 4
Or. Rev. Stat. § 249.008(1) 1
Or. Rev. Stat. § 249.009 9
Or. Rev. Stat. § 249.009(1) 12
Or. Rev. Stat. § 249.009(1)(b) ..... ii, 24
Or. Rev. Stat. § 249.712 1
Or. Rev. Stat. § 249.740 1
Or. Rev. Stat. § 249.740(1) 1
Or. Rev. Stat. § 249.740(2) 1
Or. Rev. Stat. § 249.740(4) ..... i, 14, 15
Or. Rev. Stat. § 249.850 1
U.S. Const. amend. I 10, 11, 23, 26
U.S. Const. amend. V 10, 11, 23
U.S. Const. amend. XIV 10, 11, 26

Administrative Rules

Or. Admin. R. 165-014-0270(5) 20
Or. Admin. R. 165-014-0270(5)(a) 20
Or. Admin. R. 165-014-0270 19

STATEMENT

Petitioners are supporters of a campaign that unsuccessfully sought to place Ralph Nader and Sandra Kucera as President and Vice President of the United States on the November 2, 2004, Oregon general election ballot through the procedure described in Or. Rev. Stat. § 249.740 for nomination by individual electors. Under that procedure, individual electors may nominate a candidate for each partisan public office to be filled at the general election by preparing and filing a certificate of nomination, as provided in Or. Rev. Stat. §§ 249.712 to 249.850; Supp. App. 40–50. The chief sponsor of the certificate must file a signed copy of the prospective certificate with the Elections Division for approval. Or. Rev. Stat. § 249.740; Supp. App. 45–47. After receiving approval of the proposed certificate, the chief sponsor may begin gathering signatures on the approved signature sheets.

Statute requires that each elector that signs a certificate of nomination made by individual electors must include the elector's residential mailing address. Or. Rev. Stat. § 249.740(2); Supp. App. 46. The circulator must certify on each signature sheet that the individuals signed the sheet in his or her presence and that the circulator believes that each person is an elector registered in the electoral district. Or. Rev. Stat. § 249.740(4); Supp. App. 46. To qualify for the ballot based on a certificate of nomination by individual electors, a certificate must contain a number of signatures of electors in the electoral district equal to not less than one percent of the total votes cast in the district for which the nomination is intended to be made, for all candidates for presidential electors at the last general election. Or. Rev. Stat. § 249.740(1). Collected signature sheets for each county must be submitted to the county clerk for verification of the genuineness of the signatures before the nominating petition is filed with the Secretary. Or. Rev. Stat. § 249.008(1); Supp. App. 39–40.

Among other things, county officials review the sheets to verify that each one bears the circulator's signature. In that process, county officials follow procedures established by the Secretary of State. In an affidavit, the Elections Director explained the procedures that were followed in the November 2, 2004, general election. According to him, if a sheet did not bear a circulator's signature, it was disqualified, but if it bore what appeared to be a signature, it was generally accepted without more. If a sheet bore a mark that was illegible or appeared to be initials, county officials identified that sheet for further review by his office. At that time, the elections staff would try to confirm that, despite appearances, the mark was the purported circulator's valid signature. By using the printed name under the circulator's signature, they attempted to locate the circulator's Oregon voter registration card. If the signature on the sheet appeared to match the signature on the card, the signature was accepted; if not, it was disqualified. Those aspects of the Secretary's process were historical and applied to every type of elections petition. Supp. App. 26–27.

The Secretary further explained that it was also a long-standing rule that initials could not be used in lieu of a signature. If the circulator's signature, as shown on the voter registration card or on another permissible exemplar, confirmed that the circulator's signature simply appeared like initials, then the signature was accepted. But if the exemplar showed a different signature, the initialed petition sheet was disqualified. Supp. App. 26–27.

In December, 2002, the Secretary promulgated amendments to the 2002 Candidates Manual (SCMIE), adding an additional requirement that circulators date the certification on each sheet. Supp. App. 11, 28. The date is considered a part of the circulator's certification, and failure to properly complete it constitutes failure to certify the petition sheet, resulting in disqualification. Supp. App. 11, 28. In examining

signature sheets for compliance with the date requirement, the point of the inquiry is whether it is clear from the face of the sheet that it was completed properly. Supp. App. 28. Accordingly, in past elections, the Secretary has applied these rules, as outlined by the Elections Director:

> 11. Similarly, in furtherance of the purpose to prevent fraud, the Secretary has interpreted the requirement of a dated signature to disqualify sheets bearing alterations (such as stricken materials), but has permitted corrections of a dating error by re-dating and re-signing.
>
> * * * * *
>
> 13. Where there is no date, obviously the sheet is not completed properly. It is disqualified.
>
> 14. Where the sheet is dated before the elector signatures, the sheet itself tells the clear story of how it was completed, but that clear story discloses that the sheet was completed improperly. The circulator cannot properly certify that the elector signatures on the sheet were affixed in the circulator's presence, and that the circulator believes each signor to be an eligible voter, until after the elector signatures have been affixed.
>
> 15. Similarly, a "post-dated" certification (a certification bearing a date after submission of the petition sheets to the Secretary of State), on its face, tells a clear story of how it was completed, but it is not completed properly. Where the certification is post-dated, it appears that the circulator seeks to defer responsibility for certification. * * *

> 16. When information is stricken on the date line, and other information has been substituted, the face of the sheet does not tell a clear story demonstrating that it was filled out properly. One possible scenario (the "innocent slip of the pen" scenario) is that the circulator signed it, dated it erroneously, realized the error, struck the error, and redated correctly. But another possibility is that the circulator signed improperly—perhaps before witnessing the elector signatures—conveyed the sheets to another person, and that the other person fraudulently altered [his] certification. * * *
>
> 17. On the other hand, where a date has been stricken and another written in, the sheet is accepted if either date would be proper. Also, where the date has been expressed as a range, but it is clear from the face of the sheet that it was dated all at once, the sheet is accepted if the last date in the range would be proper. * * *

Supp. App. 28–30.

After certifying the number of genuine signatures of voters submitted on each signature sheet, each county elections official returns the signature sheets to the chief sponsor of the certificate of nomination with the total number of valid signatures indicated on each separate sheet. Supp. App. 5. Notably, the matter examined by county officials is extremely limited: They simply "compare the signatures of electors on the petition or minutes with the signatures of the electors on the elector registration cards." Or. Rev. Stat. § 249.008; Supp. App. 39. The certification then states the number of signatures believed to be genuine.

If the petition sheets contain a number of signatures apparently sufficient to qualify for the ballot, the chief sponsor files the completed nominating petition with the Elections Division, along with the original petition sheets. Supp. App. 5. The Elections Division then reviews the signature sheets for compliance with state election law requirements. Supp. App. 5. The purpose of that review is to maintain uniformity and consistency in the interpretation and application of the elections law. Supp. App. 5, 38. *See* Or. Rev. Stat. § 246.110.

In the November 2, 2004, election, the Secretary of State issued instructions to all county clerks to follow for verifying the signature sheets for the 2004 Nader for President petition. Supp. App. 4. The instructions directed the counties to screen and reject signature sheets that had circulator signature and date problems. They defined what problems to look for regarding circulator signatures and dates. In the event of any question, the clerks were to fax any problem sheet to the Elections Division for review, prior to verification of signatures, so that the Secretary could determine whether to reject as invalid the entire sheet based on the particular problem.

The Elections Division worked with county election officials throughout the signature verification process, answering their questions regarding which signature sheets should be disqualified. Supp. App. 5. After petitioners received certification from the counties indicating that they had in toto more than the required number of verified signatures, they filed the completed nominating petition with the Elections Division. Intervenor Democratic Party of Oregon filed objections to the signatures on grounds including that a number of signature sheets had been submitted to the counties without page numbers in violation of the state election laws. Service Employees International Union also filed objections. Supp. App. 6.

The Elections Division then reviewed the signature sheets submitted. It rejected 718 signatures for failing to comply

with state election law requirements with respect to the circulator's oath, including sheets that were disqualified by county clerks on those grounds. An additional 10 signatures were disqualified because they were duplicates. Supp. App. 5. After contacting all county clerks to determine the total number of signature sheets that had been submitted to county clerks without page numbers, 2292 signatures were disqualified because they were submitted on unnumbered sheets. Supp. App. 6.

The number of valid signatures that the Nader/Kucera campaign needed to qualify the candidates for the ballot was 15, 306. The Secretary of State determined that the total number of qualified signatures submitted was 15,088. That left the Nader/Kucera campaign 218 short of the number of valid signatures they needed to qualify for the ballot. Supp. App. 7. on September 2, 2004, the secretary advised Mr. Nader that he had failed to gain ballot access for the office of President of the United States.

The next day, petitioners appealed the Secretary's action in the Marion County Circuit Court. In their complaint, petitioners alleged seven substantive claims, four of which were based on Oregon statutory and administrative law principles, one of which was based on the Oregon Constitution, and two of which (their fifth and seventh claims) presented federal law issues. Their fourth claim for relief was that the Secretary cannot lawfully reject signature sheets based on alleged defects in circulator signatures or dates on circulator signatures. Pet. App. 8–11. With respect to the latter claim, petitioners argued that they were unable to identify any defect in signatures or dating in many of the rejected sheets and that the Secretary had not explained what defects existed in them. Petitioners also argued, in part, that the Secretary had no authority to reject signatures as a penalty for circulator error. Pet. App. 9.

The parties disputed whether petitioners were aware of the Secretary's rules and requirements. According to an affidavit of the Elections Director, "[petitioners] obtained a copy of the instructions which the Secretary sent to all county clerks." Pet. App. 4. The instructions to county officials, which were attached as Exhibit 2 of the affidavit, included these:

> Following are procedures we need all counties to follow when verifying the signature sheets for the Nader for President petition.
>
> 1. Counties will initially screen for potential problems with circulator signature and dating of signature sheets.
>
> 2. Counties will highlight with a highlighter the areas of concern on the signature sheet. **Do not** verify any signatures on the sheets that have any potential problems or issues. Once the Secretary of State's office makes a determination on these sheets, the county will be contacted and advised on whether to verify these signatures or to reject the sheet.
>
> 3. The areas to review for concern are:
>
> The circulator signature line is blank or the circulator has signed using initials only. (First name initial with the full last name is sufficient).
>
> There is no date on the circulator date signed line.
>
> Circulator date has been crossed out or modified.
>
> The circulator signed and dated **before** the dates of some or all of the signers.

> Circulator name is a signature stamp.
>
> White out is used on the circulator name or date area.
>
> There are two different circulator names on the certification.
>
> The original signature of a circulator has been crossed out, and a new circulator's signature is inserted.

Kucera, 337 Or. at 398–400 (boldface in original).

Additionally, the Elections Director averred that he discussed candidate petition requirements with Travis Diskin of the Nader campaign on July 30, 2004. Supp. App. 30. A memo memorializing that conversation showed that "Mr. Diskin asked about the requirements for the circulator's certification," and they were explained to him. Diskin was told that circulators must sign their full legal names, not use initials, and must date the certification. If the date of the certification was wrong, they were simply to resign and redate the signature sheet, not cross out the circulator name or modify the date. Supp. App. 30–31. Petitioners provided no evidence to contradict the Elections Director's averment. Notably, the Manual sets forth as a rule the chief sponsor's responsibility to "review with the circulators the requirements for circulating the petition." *See* Supp. App. 11. Thus, if petitioners received a copy of the above instructions, as the Elections Division Director averred, it was their responsibility to convey those instructions to their circulators.

The trial court issued an order and opinion resolving petitioners' third and fourth claims for relief on September 9, 2004. The court rejected their claim "regarding the manner in which the Secretary administered the rules related to the sequential numbering requirement," concluding that "[t]hat re-

quirement * * * is specifically authorized by both statute, [Or. Rev. Stat. §] 249.009, and by an appropriate written administrative rule * * *." Pet. App. 42. It agreed with petitioners' contention, however, that no rule or statute "authorizes the wholesale rejection of signature sheets for errors other than signature sheet format violations." Pet. App. 37. The trial court also opined that no written rule justifies certain of the Secretary's requirements, *viz.*, that "each circulator must sign the circulation certificate with a full signature * * * verifiable by comparison with the circulator's own voter's registration if one exists, or with some other exemplar if a voter's registration form does not exist[.]" Pet. App. 38. The trial court made no express or implicit finding as to whether petitioners had received notice of the challenged rules and procedures before they submitted their signature sheets.

On September 14, 2004, the Secretary challenged the trial court's ruling in the Oregon Supreme Court in a petition for writ of mandamus, as well as a direct appeal of the judgment in the Oregon Court of Appeals, accompanied by a request for certification to the state Supreme Court. The Oregon Supreme Court granted the petition and request for certification and on September 22, 2004, issued an opinion, peremptory writ of mandamus, and appellate judgment requiring the trial court to withdraw its order and enter judgment in favor of the Secretary of State. *Kucera v. Bradbury*, 337 Or. 384, 97 P.3d 1191 (2004).

On September 24, 2004, petitioners applied to this Court for a stay of the Oregon Supreme Court's order pending certiorari review. The Secretary filed his response to that application on September 27, 2004. This Court denied petitioners' application the next day.[1] *See Kucera v. Bradbury*, 125 S. Ct.

---

[1] Justice Breyer would have granted the application for stay. Pet. App. 45.

27 (2004). Mr. Nader's and Ms. Kucera's names were not placed on the November 2, 2004 general election ballot as candidates for President and Vice-President of the United States.

After completing the first election cycle in which circulator dating requirements applied, the Secretary deemed it advisable to turn certain applied interpretations concerning circulator certification into more specific rules. With certain amendments, and after public comment, he proposed additional and more specific rules addressing circulator certification, which ultimately were adopted on April 8, 2005. *See* Supp. App. 52–57. The rules address in detail when a petition signature sheet will and will not be rejected for insufficient circulator certification based on defects in dating or circulator signature. They also set forth procedures for verifying by exemplar what initially is deemed insufficient certification and for notifying the chief petitioner or his designee of insufficient certification so that he may provide an alternative exemplar, when Oregon voter registration card signatures are not available for comparison with circulator signatures. Supp. App. 52–57.

REASONS THE WRIT SHOULD BE DENIED

A. Introduction.

In this case, petitioners contend that the Secretary violated their rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution during the November 2, 2004, Oregon general election by applying "unwritten rules" to disqualify a number of their nominating petition signature sheets without notice, resulting in their candidates failing to qualify for placement on the ballot. None of petitioners' claims warrants this Court's review. This case is moot. The doctrine of "capable of repetition but evading review" does not apply, because the Secretary has adopted new administra-

tive rules that will apply in the next general election and are subject to review in the state courts. Petitioners' Fourteenth Amendment claim is not properly before this Court, because petitioners did not adequately preserve it in the state courts. Petitioners' contentions ignore matters that the Oregon Supreme Court decided under principles of settled state law. Finally, the Secretary's rules and procedures were both duly authorized or mandated by the Oregon Legislature and appropriate. Even should this Court consider the merits of petitioners' federal claims, the interests served by the Secretary's rules and procedures far outweigh the purely procedural burden that the regulations place on petitioners.

B. The Oregon Supreme Court's decision

In their complaint in the circuit court, and again before the Oregon Supreme Court, petitioners alleged two federal claims. First, they alleged that the Secretary of State's implementation of a rule disqualifying voter signatures on a nominating petition on the basis of alleged or proven errors by petition circulators in signing, dating, or placing numbers on the sheets, violated the First and Fifth Amendments to the United States Constitution. Second, they alleged that the Secretary's implementation of a rule disqualifying a circulator's signature if it varied from the signature on the circulator's Oregon voter registration card discriminated against Oregon voters who are not registered to vote and violated the First Amendment right of plaintiffs to travel across state lines into Oregon to engage in core political speech and to circulate petition sheets. The Oregon Supreme Court considered all of petitioners' claims, including their federal claims, because "if one or more were correct, it would obviate the necessity of relief in mandamus." *Kucera*, 337 Or. at 405. After carefully considering the facts, the applicable statutory and constitutional legal principles involved, and the trial court's reasoning, the state's highest

court unanimously rejected all of petitioners' claims against the Secretary.

The Oregon Supreme Court first considered petitioners' state law claims. With respect to their fourth claim, it noted that the trial court had premised its ruling on its conclusion that "no statute or rule expressly authorized the Secretary of State to prohibit the counting of otherwise valid signatures of electors that supported a certificate of nomination simply because of arguable violations of signature and dating requirements respecting circulators." *Id.* at 397. After reviewing the applicable state elections law, the Court disagreed. *Id.* at 397–400. Specifically, it found that the Oregon Legislature expressly had delegated to the Secretary authority over the procedures for nominating candidates by individual electors and other elections procedures; that it had given the Secretary the "responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws"; and that it had authorized the Secretary to make rules he "considers necessary to facilitate and assist in achieving and maintaining a maximum degree of correctness, impartiality and efficiency in the administration of the election laws." *Id.* at 397–401 (quoting excerpts of Or. Rev. Stat. § 249.009(1), Or. Rev. Stat. § 246.110, and Or. Rev. Stat. § 246.150). The Court similarly noted that the legislature had enacted Or. Rev. Stat. § 246.120, which mandates that the Secretary "prepare and distribute to each county clerk detailed and comprehensive written directives," and that he "assist, advise and instruct each county clerk, on registration of electors and election procedures which are under the direction and control of the county clerk" which the county clerk "shall comply with." *Id.* at 397–98.

The Oregon Supreme Court found that "the Secretary of State exercised his authority under [Or. Rev. Stat. §] 246.120 by issuing written instructions to all county clerks regarding

the verification of elector signature sheets from the Nader campaign, including directions for addressing potential problems with the signature and dating of signature sheets by circulators." *Id.* at 398–99. The Court set forth those written instructions and accepted the state Elections Director's averment that the Secretary's "practice is to accept a purported circulator's signature if there is any reasonable way to do so." *Id.* at 400). It summarized the Secretary's practice:

> In general, state officials rejected signature sheets containing no date or alterations in the date, such as stricken materials, but accepted signature sheets that the circulator had redated and re-signed or sheets that told a "clear story" about their completion and whose circulators apparently had completed the certification properly.

Id. at 400.

The Oregon Supreme Court specifically rejected the trial court's theories that "the signature and date review procedures that the Elections Director had followed in his office were 'unwritten rules,'" It explained:

> It is true that the review procedures that [the Elections Director] described were not themselves written, but that does not render them unlawful. On the contrary, the review procedures are nothing more than the step-by-step process by which the Secretary of State carried out legal authority found elsewhere in statute, in rule, and in the Secretary of State's written instructions to the county clerks. *The review procedures were not, as the trial court's comments appear to suggest, yet another layer of unannounced legal barriers. They were, instead, the methodology by which*

> *the Secretary of State enforced existing legal standards.* The necessity for the review procedures arose in this case because the Secretary of State gave written instructions to the county clerk to return to the Secretary of State for further review all signature sheets "that have any potential problems or issues," and gave them a list of those potential problems. *The review procedures that [the Elections Director] described did not enlarge upon the written list; rather, they merely effectuated it with the goals of insuring that review by his office was a uniform process.*

Id. at 401 (emphasis added). The Court recalled that "[Or. Rev. Stat. §] 249.740(4) requires each circulator to certify on each signature sheet that the signer had signed the sheet in the circulator's presence and that the circulator believed that the signer was an elector registered in the electoral district." *Id.* at 402; emphasis in original). The dictionary definition of "certify," it noted, shows that that "means 'to attest esp. authoritatively or formally * * * to present in formal communication, esp. in a document under hand or seal * * *.'" Pursuant to that legislative directive of a formal attestation, the Secretary adopted an administrative rule requiring circulators to "sign" the signature sheet. *Id.*; Supp. App. 23. Because a "signature is 'the name of a person written with his own hand to signify that the writing which precedes accords with his wishes or intentions," the Secretary plausibly could interpret the requirement of a signature to mean that the circulator must sign his name in full, rather than simply use initials, and so instruct the county clerks. Thus, citing settled state administrative law principles, the Court held that what the Secretary did was clearly authorized and appropriate:

> In adopting the rules set out in the SCMIE [2004 State Candidate's Manual: Individual Elec-

> tors], in issuing written instructions to the county clerks, and in utilizing the circulator signature and date review procedures, the Secretary of State was obtaining and maintaining uniformity in the operation of an election law, i.e., the certification requirement in [Or. Rev. Stat. §] 249.740(4), as [Or. Rev. Stat. §] 246.110 required. *The Secretary of State thus may conclude*, and clearly has so concluded, *that a circulator's failure to comply with the Secretary of State's requirements for circulators certification means that the purported certification is invalid and the signature sheet does not comply with [Or. Rev. Stat. §] 249.740(4).*

Id. at 402–03; emphasis added.

Having reached that conclusion, the Oregon Supreme Court dispensed with the trial court's reasoning quickly. It noted that, because Or. Rev. Stat. § 249.740(4) requires the circulator to certify that the individual signed the sheet *in the presence of the circulator*, an elector's signature, without more, does not show compliance with that requirement. *Id.* at 403; Pet. App. 23; emphasis in original. It explained, "The certification requirement serves to discourage fraud in the execution of signature sheets. The Secretary of State's choice to invalidate a signature sheet if the circulator violates the certification requirement promotes that objective." *Id.* The Court further noted that when several counties failed to comply with the Secretary of State's written instructions, that "threatened a violation of the uniform application of the Secretary of State's requirements for circulator certification." *Id.* at 405; Pet. App. 26. As a matter of state law, then, the Court concluded, "[f]aced with that potential violation of uniformity, the Secretary of State's choice to engage in a post-verification review of signature sheets from noncomplying counties was a permissible one." *Id.* at 405.

Petitioners' other statutory claims also failed. Their first claim failed, because Oregon law does not require the Secretary to include with his decision findings of fact, conclusions of law, or reasons for notifying Nader that his campaign had filed insufficient signatures, as petitioners alleged *Id.* at 406–07; Pet. App. 28. Their second claim—that the Secretary could not lawfully refuse to recognize verified elector signatures on signature sheets containing errors by circulators of the Nader campaign—failed for the same reasons that their fourth claim failed. *Id.* Their third claim—that the Secretary of State should be estopped from refusing to count signature sheets that were not sequentially numbered, because the Nader campaign followed the instruction of elections officials in numbering submitted signature sheets—failed because the campaign's reliance on any such statement would not have been reasonable, in light of published rules. *Id.* at 407–08; Pet. App. 29. In terms of substantive claims, that left only petitioners' state and federal constitutional claims.

The Secretary quotes that portion of the Oregon Supreme Court's opinion in full, because it correctly frames the remaining legal issues before it:

> [Petitioners'] fifth, sixth, and seventh claims for relief assert various constitutional challenges, which we summarized above, to the Secretary of State's disqualification of signature sheets due to errors by circulators in signing and dating the sheets. [Petitioners] contend that a compelling justification must support the state's enforcement of any rule that results in the disqualification of the signatures of registered voters.
>
> We do not dispute that the statutory procedure for nomination by individual electors implicates important aspects of the political lib-

erty and associational freedom of Oregon's electors. However, *[petitioners'] claim that the Secretary of State's action effectively compels them to collect thousands of signatures in addition to the number required by Oregon statute or the state constitution is illusory. [Petitioners], like all political participants, must collect only the number of signatures, and comply with the pertinent signature gathering procedures, that Oregon law requires.* Thus, contrary to [petitioners'] argument, the Secretary of State has not imposed an undue burden on [petitioners'] political freedoms under the state or federal constitutions.

The United States Supreme Court has noted, in an analogous context, that *a state (there, Colorado) "retains an arsenal of safeguards" to protect the integrity of a ballot-initiative process, to deter fraud, and to diminish corruption.* Buckley v. American Constitutional Law Foundation, Inc., 525 U.S. 182, 204–05, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999). The Court in Buckley specifically cited a state statute that invalidated an initiative "if [the] circulator has violated any provision of laws governing circulation" as one example of a legitimate state safeguard. Id. at 205. The Court also noted that *states "have considerable leeway to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally,"* id. at 191, citing as an example Colorado's requirement that petition circulators attach to each petition section an affidavit containing particular factual statements.

> We recognize, of course, that functional differences exist between the initiative process scrutinized in Buckley and the candidate nomination procedure under consideration here. *But, as noted, the underlying signature collection and circulator certification procedures are analogous. For that reason, we conclude that, according to the principles discussed in Buckley, Oregon's circulator certification procedure, and the other procedures discussed above that protect the electoral process from fraud, withstand federal constitutional scrutiny.*

Id. at 408–09; Pet. App. 30–32; emphasis added. Accordingly, the Oregon Supreme Court held that "the Secretary of State's disqualification of signature sheets in this case is not unconstitutional for the reasons asserted by [petitioners]." *Id.*

C. This case is moot.

As discussed above, petitioners' aim in challenging the Secretary's actions in state courts was to obtain an order requiring the Secretary to place the Nader/Kucera ticket on the November 2, 2004, general election ballot. Petitioners' main theory under the federal constitution was that the Secretary had violated their constitutional rights by applying "unwritten rules" to them without prior notice. Without regard to the merits of those factual assertions (which the Secretary disputes), petitioners' "as applied" challenge to the Secretary's actions was specific to the November 2, 2004, general election. That election is over, and the issues presented by the petition in this case are therefore moot.

1. Applicable Legal Principles

Recognizing the mootness problem they face, petitioners cite, without analysis, a number of elections cases in which

this Court held that the issues presented were not moot because they were "capable of repetition yet evading review." Pet. Cert. 4. That doctrine applies "when '(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.'" *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 187 (1979) (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)). Those requirements must be met in elections cases, as well as in other contexts. *See, e.g., Illinois State Bd. of Elections* ("as applied" equal protection claim challenging Illinois law that effectively required new party or independent candidates to obtain substantially more signatures in mayoral elections than in a statewide election was moot, because the appellant had "presented no evidence creating a reasonable expectation that the Chicago Board [would] repeat its purportedly unauthorized actions in subsequent elections."). Both prongs must be satisfied before this Court will consider the merits of an otherwise mooted claim. *See id.*

2. Petitioners' Due Process Claims

In this case, neither of the requirements for application of the doctrine is met. First, the due process issues in this case are not capable of repetition. As a factual matter, if the Nader campaign was not aware of the Secretary's interpretation of elections law rules in the last presidential election, it certainly is now. There can be no further misunderstanding concerning what is required to properly certify a nominating petition signature sheet. More importantly, after the last election, the Secretary adopted written rules that spell out how elections officials should determine whether the dates and circulator signatures on a signature sheet comply with statutory certification requirements. *See* Or. Admin. R. 165-014-0270; Supp. App. 53–57. Chief petitioners for nominating petitions will have no

viable claims of lack of notice of certification standards in future elections.

Nor has the propriety of the Secretary's past actions evaded review. On or about September 3, 2004, petitioners challenged the Secretary's decision not to place their ticket on the ballot in the Marion County Circuit Court. That court's decision, rendered September 9, 2004, was reviewed by the Oregon Supreme Court, which issued a judgment resolving the case on September 22, 2004. Petitioner had time to request a decision from this Court asking for a stay of the state court's issuance of a peremptory writ of mandamus, which this Court denied on September 28, 2004. Because petitioners had sufficient time to fully litigate the challenged procedures of the Secretary before the November 2, 2004, Oregon general election ballot was printed, it cannot be said that this case evaded review.

3. Petitioners' Right to Travel Claim

The new rules specifically address petitioners' challenge to the Secretary's procedures for verifying out-of-state circulators' signatures. Under the new procedures, if a preliminary determination is made that a certification is insufficient for reasons related to the manner in which a circulator signed the signature sheet, the Elections Division first will compare the signature to the circulator's current Oregon voter registration card signature, if available, and will accept matching signatures. Or. Admin. R. 165-014-0270(5)(a); Supp. App. 55. However, if an Oregon voter registration card bearing the circulator's signature is not available, the Elections Division will compare the certification signature to an alternative exemplar filed with the Elections Division or, if no alternative exemplar has been filed, it will notify the chief petitioner or his representative of the problem, and that person will have an opportunity to submit an alternative exemplar of the circulator's signature. Or. Admin. R. 165-014-0270(5); Supp. App. 55–

56. The new rules thus effectively moot petitioners' claim that the Secretary rejects signatures of out-of-state circulators based on the unavailability of an Oregon voters registration card exemplar, thereby creating a "freedom of travel" violation. Their current complaint is not "capable of repetition." Additionally, for reasons set forth above, it has not "evaded review."

4. Petitioners' First Amendment Claims

The adoption of new administrative rules also moots petitioners' claims that the Secretary's rules and procedures unduly burden the rights of voters and campaigners to place their candidates on the ballot. There is no reason to conclude that the "circulator error" problems that petitioners allege they experienced during the last election will reoccur in the next one. Petitioners' claims are not "capable of repetition" within the meaning of the doctrine on which they rely.

Further, a challenge to the Secretary's new rules obviously would not evade review. Under Oregon's Administrative Procedures Act, "[t]he validity of any rule may be determined upon a petition by any person to the Court of Appeals in the manner provided for review of orders in contested cases." Or. Rev. Stat. § 183.400(1). Supp. App. 37–38. "The validity of any applicable rule may also be determined by a court, upon review of an order in any manner provided by law or pursuant to [Or. Rev. Stat. §] 183.480 or upon enforcement of such rule or order in the manner provided by law." Or. Rev. Stat. § 183.400(2). "The court shall declare the rule invalid * * * if it finds that the rule * * * [v]iolates constitutional provisions[.]" Or. Rev. Stat. § 183.400(4)(a). Thus, there exists a state court procedure through which petitioners may challenge the constitutional validity of the rules without fear that their contentions cannot be fully litigated before the next presidential election, three and one-half years away.

Moreover, the fact that the state courts have never passed on the new rules' validity under either state or federal law presents a significant institutional reason for denying review in this case. Petitioners have available to them a legal mechanism in state court to challenge the facial validity of the new rules, at which time state courts can decide whether they violate state statutes or the Oregon or United States Constitutions. Or. Rev. Stat. § 183.400(1); Supp. App. 37. It would be speculative to conclude that the state courts will uphold the rules against all potential challenges. This Court should decline to review the validity of the new rules in order to give state courts the initial opportunity to consider their validity.

D. Petitioner's Equal Protection Claims Are Not Properly Before This Court.

In this Court, petitioners argue that the Secretary's application of state statutes, rules, and internal review procedures violates the equal protection rights of voters who wish to cast votes for independent candidates for federal office. (Pet. Cert. 28–29). That is so in part, petitioners contend, because "state law does not allow write-in votes for such a candidate to be counted except in the extraordinary circumstance where the total write-in vote exceeds the vote for any candidate listed on the ballot[.]" (Pet. Cert. iii). However, petitioners do not demonstrate that they presented their equal protection claim to the trial court. Undoubtedly for that reason, the Oregon Supreme Court did not address it. Under state law, appellate courts may not review claims not preserved in the trial court, unless those claims involve errors apparent on the face of the record. *Ailes v. Portland Meadows, Inc.*, 312 Or. 376, 380–81, 823 P.2d 956 (1991). Because petitioners failed to present an equal protection claim to the state courts in a posture in which it could be reviewed under state law, this Court should not consider such a claim now.

In any event, such a claim would fail, because it is premised on the erroneous understanding that voters have an unqualified right to have their signatures counted towards the nominating total required, even if circulators do not certify them properly. As the Oregon Supreme Court concluded, any interest that voters have in having their signatures counted must be balanced against all voters' interests in having fair and impartial elections, absent of fraudulent conduct. And, in fact, a given campaign need not turn in signature sheets at all. Clearly, disqualifying signature sheets that are not in compliance with rules promulgated to protect Oregon voters' interest in having fair and impartial elections does not offend equal protection principles.

E. The Oregon Supreme Court Applied Settled Principles of Federal Law to Uphold the Secretary's Nondiscriminatory and Reasonable Elections Regulations.

As suggested above, petitioners may contend that their challenges to the Secretary's actions are not moot, because they have challenged the justification for them under federal constitutional principles. Even assuming for the purpose of argument that that is correct, this Court still should not grant review. Petitioners' claim that the requirements for certifying nominating petition signature sheets violate the rights of prospective candidates and voters under the First and Fifth Amendments to the United States Constitution is meritless.

1. Petitioners' claims have been largely resolved against them under state law.

As a preliminary matter, petitioners ignore that major factual and legal predicates of their federal claims were decided against them under principles of settled state law. Petitioners ask, for example, "What is the state interest in applying unwritten rules to reject signature sheets because the Defendant does not like the look of the circulator's signature or because

the date is corrected in any way?" (Pet. Cert. 20). The answer is that under state law, the Secretary did *not* apply "unwritten rules" but, rather, properly reviewed petitioners' signature sheets for compliance with existing statutory and rule requirements for certification. Similarly, petitioners complain that the Secretary's "policies deprive the signor of any assurance that her valid signature will be counted, because he is disqualifying entire sheets of elector signatures on bases that have nothing to do with their validity." (Pet. Cert. 22). As a matter of state law, however, improperly certified signature sheets are *not* valid, because they do not demonstrate that the individual has signed the sheet in the presence of the circulator, an Oregon statutory requirement aimed at discouraging fraud in the execution of signature sheets. *Kucera*, 337 Or. at 402. Throughout their analysis, petitioners' assessment of the burden placed on them compared with the Secretary's justification for his rules is skewed, at times dramatically, by their reliance on factual and legal assertions that have been rejected under state law. The issues they present are essentially fact-bound or represent mere disagreement with the Oregon Supreme Court's legal conclusions about the Secretary's authority and the responsibilities of his office.

Petitioners' contention that there is "no compelling or even important or even plausible state interest that is achieved by rejecting signature sheets that are not sequentially numbered" exemplifies that problem. Pet. Cert. 25. Petitioners first argue that the Secretary's staff advised them to submit their signature sheets with no initial numbering on them. Pet. Cert. 24. The Oregon Supreme Court specifically rejected the notion that that negated the Secretary's authority not to count such signature sheets, observing that Or. Rev. Stat. § 249.009(1)(b) directs the Secretary to prescribe a system of numbering, which the Secretary did, by rule. *Kucera*, 337 Or. at 407. Under state law, in light of published statute and rule, it was not

reasonable for the Nader campaign to rely on alleged misadvice by the Secretary's staff. *Id.* at 407–08; Pet. App. 29–30.

Similarly, petitioners assert that "[t]here is nothing in statute or rules applicable to nominating petitioners that failing to number the sheets disqualifies all signatures on those sheets." Pet. Cert. 26. The Oregon Supreme Court expressly concluded that Oregon law authorizes precisely that. *Kucera*, 337 Or. at 401–03; Pet. App. 23–25. In short, most of petitioners' contentions have been resolved under state law. This Court should not reexamine them here.

2. This Court reviews the Secretary's regulations to determine whether they are reasonable and nondiscriminatory.

A second flaw in petitioners' arguments on the merits is that petitioners misstate the level of scrutiny applicable to reasonable and nondiscriminatory procedural election regulations such as the ones at issue here. This Court starts from the premise that the conduct of the elections process, even in the presidential context, is a constitutional obligation of the states and that the process commonly and properly requires a significant degree of detailed regulation:

> We have recognized that, "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Storer v. Brown*, 415 U.S. 724, 730, 94 S. Ct. 1274, 1279, 39 L. Ed. 2d 714 (1974). To achieve these necessary objectives, States have enacted comprehensive and sometimes complex election codes.

Anderson v. Celebrezze, 460 U.S. 780, 788 and n. 9 (1983). While recognizing that such regulations inevitably affect "at

least to some degree" voting and associational rights, the Court has made absolutely clear that decisions that affect ballot access are not to be given the same strict level of constitutional scrutiny applied to expressive claims in other contexts because to do so "would undermine the ability of the States to operate elections fairly and efficiently" and "tie the hands of States seeking to assure that elections are operated equitably and efficiently." *Anderson*, 460 U.S. at 788; *Storer*, 415 U.S. at 730; *Burdick v. Takashi*, 504 U.S. 428, 433, 438 (1992).

This Court has declined to apply a test of strict scrutiny, except in cases where the content of the regulation itself places a "severe" restriction on ballot access. *Burdick*, 584 U.S. at 438; *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). The Court instead has adopted a test for ordinary procedural election rules and applications that will uphold reasonable and non-discriminatory restrictions:

> When a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interests are generally sufficient to justify" the restrictions.

Burdick, 504 U.S. at 434 (quoting and citing *Anderson*, 460 U.S. at 788–89 and n. 9); *Timmons*, 520 U.S. at 354. As discussed below, under that standard, the regulations in this case pass constitutional review easily.

3. The state's interest in holding fair and efficient elections far outweighs the minimal burdens that the Secretary's rules place on nominating petition gatherers.

Finally, petitioners contend that in the November 2, 2004, election, the Secretary provided no compelling or even important justification to justify his refusal to count signature sheets that did not comply with certification and pagination rules. According to petitioners, "[t]he implementation of a rule

which disqualifies voter signatures on the basis of alleged (or proven) errors by circulators (in signing, dating, or placing numbers upon the sheets) significantly burdens the collection of signatures by precluding from the verification process, without an exacting standard of compelling justification, thousands of signatures." (Pet. Cert. 19–23). Without identifying any precedent to support their position, petitioners conclude that, because the rules impair voters' franchise rights, the Oregon Supreme Court must have incorrectly applied the federal constitution to their case. (Pet. Cert. 29–30).

Petitioners' existing as applied challenge, or potential facial challenge, to the newly-adopted administrative rules simply fails. Petitioners complain bitterly about circumstances that they allege occurred during the recent Oregon presidential election. Interestingly, even in the November 2, 2004, general election, petitioners were successful in properly certifying and numbering signature sheets containing 15,088 valid signatures, just 218 short of the number needed to place their candidates on the Oregon ballot. Those facts strongly support the inference the Secretary's rules did not, and in the future will not, unfairly impair petitioners' ability to have properly certified and numbered signature sheets counted toward the number needed. Petitioners do not identify any particular burden that complying with published certification and sequential numbering rules would impose on them in future elections.

Petitioners also have failed to recognize the important interests justifying the certification, dating, and numbering rules challenged here. Again, this Court has recognized the state's "important regulatory interests" in this context to include the prevention of fraud, the maintenance of integrity, fairness, and efficiency, and the need for order and trustworthy results. *E.g., Timmons*, 520 U.S. at 354; *Anderson*, 460 U.S. at 788; *Storer*, 415 U.S. at 730. Those are precisely the interests that the Oregon legislature has articulated in Or. Rev. Stat. §

246.110 and Or. Rev. Stat. § 246.150 in charging the Secretary of State, as the state's chief elections officer, with the responsibility of interpreting and administering Oregon's election laws. This Court also has made it clear that it does "not require elaborate, empirical verification of the weightiness of the State's asserted justifications" for reasonable procedural or administrative burdens on ballot access. *Timmons*, 520 U.S. at 364. Nevertheless, there was ample evidence in this case to support the Oregon Supreme Court's conclusion that the state's interests in preventing fraud and running an fair, orderly, and efficient election were sufficient to justify the minimal burden placed on petitioners by the Secretary's rules and internal review procedures.

In the state courts, the Secretary introduced several affidavits and testimony from persons involved in the elections process, including the Elections Director, explaining the reasons for his rules and policies. With respect to the sequential numbering requirement, the Elections Director averred:

> The purpose * * * is twofold: it allows officials to readily locate any sheet or page of the petition to which objections may be made or filed, and second, to avoid the possibility of fraud which may occur by tampering with sheets after county verification. The numbers are necessary to allow the counties to create a database in order to check for duplicates. Requiring numbered pages prior to submittal also shows that all pages have been submitted by the chief sponsor of the petition, and it prevents tampering by insertion of additional signatures after a petition has been filed.

Supp. App. 6–7. (Emphasis in original). Similarly, the affidavit of Jeannie Berg, the Election Protection Coordinator for America Coming Together, has averred that the prior sequen-

tial numbering rule serves to make the Chief Sponsor accountable for his submissions to the county; shows that the signatures were gathered lawfully and that the signature sheets comply with the applicable standards; and requires the Chief Sponsor to exercise control, thereby increasing accountability and helping to deter fraud. Supp. App. 334. In short, the requirement helps ensure the integrity and efficiency of Oregon's nominating process. And the benefit to the system from these rules runs both directions. For example, it helps protect nominating signature gatherers themselves by ensuring that the county returns all of the sheets they submitted to it. It also helps to prevent one campaign from discrediting another by adding fraudulent sheets.

The Secretary's certification and dating requirements also serve important purposes. As the Elections Director stated:

> [T]he certification requirement and signature verification process do help disclose suspicious signatures and likely fraud. For example, in 2000 Kelly Highley was convicted of signature fraud, after Yamhill County personnel examining the signatures suspected forgeries on sheets certified by Ms. Highley. Even in the most recent initiative cycle we have observed several potential cases of criminal signature fraud[.]

Supp. App. 27–28. In Berg's affidavit, she stated that in her experience, circulators had been able to deny responsibility for obvious fraud by claiming that they did not collect a signature. They also had given inaccurate information about their addresses, in order to avoid being held responsible. In her opinion, "any rule that strengthens the Secretary's ability to accurately identify the circulator and eliminate circulator excuses deters fraud." Supp. App. 35. Berg also explained that she recommended the dating requirement to the Elections Director in 2002 to "help hold circulators more accountable" in investigating fraud. She gave a specific example of how the

absence of a dating requirement allowed a particular circulator to argue it was not he who submitted a forged signature. Supp. App. 33–34.

That and other evidence provided the Oregon Supreme Court ample evidence from which to conclude that the challenged procedures were justified as non-burdensome means of ensuring that Oregon's elections are fair, orderly, and efficient. The rules on prior sequential numbering, circulator signatures, and circulator dating of signature sheets, derive from and implement the Secretary's lawful authority. None burdens expression; the rules are garden-variety regulatory procedures of the sort recognized as legitimate in *Timmons* and *Buckley*. They are part of an overall electoral mechanism that imposes limited procedural obligations on the candidate and supporters, and they exist to prevent fraud and to insure the accountable, uniform, fair and efficient operation of the electoral process. They are reasonable, nondiscriminatory procedural requirements, and the Oregon Supreme Court, in its unanimous decision, merely applied principles previously approved by this Court to uphold them.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

HARDY MYERS
Attorney General of Oregon
PETER SHEPHERD
Deputy Attorney General
MARY H. WILLIAMS
Solicitor General
KAYE E. MCDONALD
Assistant Attorney General
Counsel for Respondent

April 20, 2005